

Case law

Case Details

National ID: 590/2004

Member State: Spain

Common Name: Bartolomé and Juana v "Royal Vacaciones S. A."

Decision type: Other

Decision date: 28/06/2004

Court: Audiencia Provincial (Appellate court, Madrid)

Subject:

Plaintiff:

Defendant:

Keywords:

Directive Articles

Package Travel Directive, [Article 4, 7](#). Package Travel Directive, [Article 5, 2](#).

Headnote

The lack of information about the consequences of an earthquake that took place during the trip produces moral damages to be compensated for, due to the lack possibility on the part of the consumer to decide freely on the continuation of the trip, on the grounds of the lack of information and of not being given any alternatives.

Facts

Two consumers claimed patrimonial an moral damages to the trip organizer, suffered in connection with the earthquake that hit Turkey in August 1999, during the package travel organized by the defendant. In particular, the consumers accused the organizer of the lack of information about the characteristics and relevance of the earthquake before leaving from Istanbul to Ankara. The earthquake happened the day previous to that journey. Its epicenter was in Izmit, a town on the way to Ankara. It was considered proved that the representatives of the organizer in Turkey played the matter down and they did not give appropriate information to the consumers for them to make up their mind to make the journey. This happened along B-roads, through areas affected by the earthquake and made the tourists fearful and uneasy given the possibility of the tremors happening again, so some of them refused to go back through the same route, spent the night at their own expense in Ankara and hired a plane to return to Istanbul to meet the rest of the group. The judgment of the appeal accepted the demand of the consumers, rejected in the first instance.

Legal issue

The judgment considers that the lack of information that the organizer should have provided to the consumer about the real impact of the earthquake, as an element that could alter significantly the essential terms of the contract that was already being executed with the due offer of alternatives (art. 10.1 of the law 21/1995), which were not given, amounted to "a breach of contract, since it made the tourist, with no ability to decide, to embark on the journey in a situation and in circumstances very different from the ones that had been agreed".

The lack of information provoked serious discomfort that the judgment views under the institution of "moral damage". It does not apply to refund the consumers with the price of the trip because this took place as it was planned. The extra expenses of phone calls should not be refunded either, since in Spain there was enough information on the tragedy, so one or two phone calls would have been enough, nor the medical expenses, since there was no causal connection. Therefore only moral damage is acknowledged due to the "remarkable unease" inflicted to the travelers during the journey from Istanbul to Ankara, since the situation was objectively likely to produce anguish and an abnormal level of tension in people", although it never became an extremely serious situation in which the appellants would have come straight back to Spain from Ankara, without visiting Capadocia at a later stage, as it happened, so it is decided a compensation of 1,000 euros for each one of the appellants.

Decision

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